

MEMORANDUM

November 10, 1977

STROOCK & STROOCK & LAVAN

1150 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

(202) 452-9250

TO: Boston Redevelopment Authority

FROM: Stroock & Stroock & Lavan

RE: Proposed Cross-town Street

Thank you for the opportunity to make this presentation to the BRA this afternoon. This law firm, Stroock & Stroock & Lavan, with which I am associated, represents Roxse Homes, Inc. ("Roxse"). As you probably know, Roxse is a nonprofit corporation composed of church and community group representatives. Roxse owns various low and middle income housing projects, among them the Roxse complex of apartment buildings in Roxbury/South End, located between Tremont Street on the West, Shawmut Avenue on the East and bounded by Northampton Street on the North and Sterling Street on the South. These buildings contain 364 units, and house hundreds of low income families, many with small children. Roxse's parking lot is located directly north of Sterling, and Sterling Street provides access to the lot. The project has stood on this location since 1972.

We are here today to discuss with you the proposed construction of the four lane local Cross-town street and to request that you reconsider the location or design of the street, particularly as it affects Roxse Homes and the neighboring apartment buildings. We want to emphasize that Roxse is not opposed to the proposed Industrial Park, to be developed by the Economic Industrial and Development Corporation ("EDIC").

However, Roxse objects to the construction of a four-lane street adjacent to Roxse Homes and neighboring residences.

For the reasons which follow, we request that the BRA delay its vote on the swap of its 25 parcels of land in the South End and Campus High School urban renewal areas, for the Department of Public Works in consideration for 21 parcels of land.

We also request that the Authority postpone, if possible, the commencement of performance of the October 27, 1977 amendment of its contract with Fay, Spofford and Thorndike Engineers, Inc., relating to the design of the Cross-town Street. This amendment was approved without adequate consideration of the environmental consequences of the action and may have exceeded the BRA's authority.

I. THE SWAP OF LANDS IS PREMATURE - FEDERAL ACTION PENDING

On July 27, 1977, our firm submitted a written comment to the Secretary of the U.S. Department of Transportation ("DoT") regarding the draft Environmental Impact Statement ("EIS") on the Orange Line Relocation and Arterial Street construction. A copy of this comment is attached to the statement. There has been additional correspondence since that date, and our objections are still pending before DoT and the Federal Highway Administration. It is conceivable, therefore, that DoT will require the State of Massachusetts and the Boston Redevelopment Authority to replan

the location of the proposed Cross-town street. In that event, a new EIS, relating to the Cross-town Street will have to be prepared, hearings held, and environmental impact assessments made. For the foregoing reasons, we respectfully submit that the proposed swap should be postponed until the Federal Government finally resolves such issues.

As we indicated in our comment to the DoT, neither the Authority nor the State notified Roxse, prior to the execution of the draft EIS, that part of the contemplated Cross-town Street would be constructed in Sterling Street's present location.

A major purpose of the National Environmental Policy Act was to ensure that state and local agencies, including the BRA, afford full opportunity for effective participation of interested parties in the consideration of highway location and design proposals. For instance, the state highway departments are directed by the regulations (23 CFR Parts 790 and 795) to coordinate proposals with public and private interests; to fully consider possible adverse economic, social, and environmental effects relating to any proposed federally funded project on any federal aid highway system; and to make final decisions in the "best overall public interest." (23 CFR §790.1(c)(2)).

Indeed, the first official notification to Roxse of the proposed local street construction occurred on May 24, 1977. The notice was in the form of a letter by Mr. Kenneth E. Kruckemeyer of the Massachusetts Executive Department, Southwest Corridor Development Coordinator, advising that construction of the new street would cut off

the existing access to Roxse's parking lot; Mr. Kruckemeyer proposed alternate entrances to the parking lots and arranged to attend the next Roxse board meeting, which is scheduled for June 21.

At the June 21 meeting, the Roxse Board informed Mr. Kruckemeyer of its unanimous adamant opposition to the removal and replacement of Sterling Street.

Another example of the BRA's failure to notify interested parties, such as Roxse Homes, of proposals that significantly affect Roxse and adjacent landowners is evidenced by the fact that Roxse did not learn of the proposed swap until October 26, the day before the BRA meeting, that an item on the agenda concerned the swap of lands in question. At our request further consideration of the swap was postponed until today.

As more fully discussed in our July 27 comment, the failure to fully consider the interests of Roxse and of adjacent landowners as they relate to this swap raises serious questions which have not been finalized by DoT. Accordingly, we request that the BRA delay consideration of this swap, until full Federal Government consideration has been made of the environmental impact of the street construction.

II. THE PROPOSED STREET WOULD ADVERSELY AFFECT RESIDENTS OF ROXSE HOMES IN TERMS OF NOISE, SAFETY, AND LIVABILITY.

To aid the BRA in its evaluation of the environmental considerations of this proposed swap, Roxse Homes is in the process of contacting and retaining appropriate environmental experts, to assess the impact of the local on the physical and human environment.

In brief, Roxse believes that the construction of the four lane highway near Roxse will have a significant adverse impact on the Roxse complex and neighboring apartment buildings due to factors of noise, safety, property value, and livability. The new street will constitute an extension of the Southeast Expressway ramps and consequently attract trucks and other motor vehicles. This increase in traffic will contribute to a higher noise level, disturbing the residents and making Roxse Homes an undesirable place to live. Also, the existence of a four lane highway will threaten the safety of children who live in Roxse Homes, due to the very real danger of a closely proximate highway. Further, it is probable that the existence of the street will deter new tenants from moving to the complex and will thereby increase vacancies.

As you know, this complex was built in accordance with the National Housing Act, one of the purposes of which is to provide safe and sanitary dwellings for low and middle income persons. To offer these people a possibly unsafe, noisy complex is to violate the intent of the Act. The construction of the street, then, will be unfair to these people. If, as a result of the construction of the street, there will be increased vacancies in Roxse and other projects, then, obviously, the design to construct the street works an economic hardship on the owners.

We request that you delay your decision on the swap pending the completion of an environment study which will be submitted to your for your consideration.

CONCLUSION

To summarize, we believe the vote on the swap is premature and should be postponed since the Federal Government has not made a final determination on the construction of the Cross-town street; and an expert's analysis of the environmental impact will be prepared shortly. For the same reasons we request that the Board reconsider its approval of the Fay, Spofford and Thorndike contract.

Thank your for your kind attention.

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July 27, 1977

The Honorable Brock Adams
Secretary
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D. C. 20590

Re: Comment to Draft Environmental Impact Statement:
Orange Line Relocation and Arterial Street Con-
struction, South Cove to Forest Hills, Boston,
Massachusetts, UMTA Project No. MA-23-90007
FHWA Project No. U-393(1)

Dear Mr. Secretary:

On behalf of our client, Roxse Homes, Inc., and pursuant to 23 CFR Part 771, we submit this comment regarding the above-referenced Draft Environmental Impact Statement ("draft EIS"), prepared by the Urban Mass Transportation Administration and the Federal Highway Administration in coordination with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Public Works.

For reasons more fully discussed below, we ask the cognizant state and federal agencies to take two actions. First, we request that they halt the construction and any plans for construction of the proposed Cross-town Street (included as "Segment 1" of the Arterial Street Construction). Second, we request the processing of a new draft EIS, evaluating the environmental impact of the proposed new Cross-town Street.

Roxse Homes, Inc. ("Roxse") is a Massachusetts nonprofit corporation, composed of church and community group representatives; it owns various low and middle income housing projects, among them a complex of apartment buildings in the South End of Boston, Massachusetts, located between Tremont Street on the west, Shawmut Avenue on the east, and bounded by Northampton Street on the north and Sterling Street on the south. These buildings contain three hundred sixty-four units, and house hundreds of low-income families, many with small children. Its parking lot is located directly north

of Sterling Street, and Sterling Street provides access to the lot. The project has stood on this location since 1972.

Roxse, through its president and Chairman of the Board, Mr. James E. Cofield, Jr., was first officially notified on May 24, 1977 that the Massachusetts Department of Public Works proposed to eliminate the two-lane Sterling Street by constructing a four-lane new Cross-town Street. The notice was in the form of a letter by Mr. Kenneth E. Kruckemeyer of the Commonwealth of Massachusetts, Executive Department, Southwest Corridor Development Coordinator, to Mr. Cofield, which advised that construction of the new street would cut off the existing access to Roxse's parking lot inasmuch as a driveway from the new street to the lot "would be very dangerous"; Mr. Kruckemeyer proposed alternate entrances to the parking lot and arranged to attend the next Roxse Board meeting, which was scheduled for June 21st.

At the June 21st meeting, the Board informed Mr. Kruckemeyer of its unanimous adamant opposition to the removal and replacement of Sterling Street. The Board based its opposition on the following grounds: The residential character of the Roxse apartment complex and nearby apartment buildings would be spoiled by the construction of a busy four-lane highway. Further, the new Cross-town Street would constitute an extension of the Southeast Expressway ramps and consequently attract many trucks and other motor vehicles. This increase in traffic would contribute to a higher noise level, disturbing the residents and making Roxse Homes an undesirable place to live. Even more important, a four-lane highway would pose safety threats to the many small children who live in the Roxse complex and neighboring buildings and who play along Sterling Street. Moreover, the change in the parking lot access would pose a further inconvenience to the Roxse residents.

It was not until the June Board meeting that Roxse received the draft EIS and discovered that the proposed construction of the new Cross-town Street, which would adversely affect the liveability of Roxse Homes, was not addressed in the draft EIS because it was considered a "non-major action."

In late March, 1977, Mr. Kruckemeyer had spoken with Mr. Roland Peters, the on-site property manager for Roxse, regarding the proposed elimination of Sterling Street and the need for a new access to the parking lot. Mr. Peters was not an employee, officer or director of Roxse; rather, he was an independent contractor. On April 19, 1977, Mr. Peters advised the Roxse Board of the information conveyed by Mr. Kruckemeyer, and the Board voted to oppose the proposed action. The Board was not aware of Mr. Kruckemeyer's connections

with the Commonwealth of Massachusetts; they thought he had given this information to Mr. Peters in his (Kruckemeyer's) capacity as an architect and private citizen of the Southwest Corridor Working Committee. On May 13th, Mr. Cofield, Jr., in his capacity as Chairman of the Board, notified Mr. Kruckemeyer of the Board's opposition of the proposal by means of a letter sent to Mr. Kruckemeyer's home address. It was not until Mr. Kruckemeyer's May 24th letter to Mr. Cofield, on Commonwealth of Massachusetts letterhead, that Roxse was aware of Mr. Kruckemeyer's affiliation with the State.

From the foregoing sequence of events, it is clear that Roxse was not aware of the adverse impacts to it and to the surrounding area flowing from the proposed Southwest Corridor Development prior to the deadline for submission of comments on the draft EIS. The deadline therefore should not be imposed in this instance, and the matters raised in this comment should be evaluated and acted upon by the appropriate agencies prior to the issuance of a final EIS.

The captioned draft EIS labels the proposed new Cross-town Street a "non-major action" (Fig. I-3, and page 1-7) and does not discuss the probable adverse effects that would result from its construction. We submit that construction of the new street constitutes a "major action"; accordingly, the procedures followed by the state and federal agencies in their preparation of the draft EIS violated the letter and spirit of both Section 128 of the Federal-Aid Highway Act of 1970 and Section 102(C) of the National Environmental Policy Act ("NEPA"). In clear disregard of the mandate of Section 128 of the Federal-Aid Highway Act of 1970, the cognizant state agency did not adequately consider the "economic, social, environmental, and other effects" of the location, design and alternatives to the new Cross-town Street. Similarly, the cognizant federal agencies failed to include in the draft EIS "a detailed statement by the responsible official on" the effect of the new Cross-town Street, and more particularly:

- (a) Its environmental impact;
- (b) Any adverse environmental effects which cannot be avoided by its implementation; and
- (c) Alternatives to the construction of the new street.

Had they consulted with Roxse and with other apartment house owners on Sterling Street, these agencies, without question, would have concluded that the construction of the new street was a "major action significantly affecting the quality of the human environment" which necessitated evaluation and analysis under NEPA and §771 of the Federal Highway Administration's ("FHWA") regulations.

We therefore request that a draft EIS, on the subject of the new Cross-town Street, be issued and acted upon pursuant to the Federal Highway Administration's regulations. We further request a halt to any construction or plans for construction of the new Cross-town Street until the impact on Roxse Homes and the neighboring human environment has been adequately assessed.

The following discussion will serve to demonstrate that the new Cross-town Street is a "major action." "Major actions" are defined in 23 CFR §771.9(d) as

"those of superior, large and considerable importance involving substantial planning, time, resources or expenditures. Any action that is likely to precipitate significant foreseeable alterations in land use, planned growth, development patterns, traffic volumes, travel patterns, . . . would be considered a major action."

An April 10, 1974 interim report prepared by Housing Innovations, Inc. for the Southwest Corridor Development Coordinator, Executive Department, Commonwealth of Massachusetts* describes the proposed Cross-town Street as follows:

This new street will be located in the cleared land existing from the Southeast Expressway at Massachusetts Avenue to Columbus Avenue at Ruggles Street. It will have two moving traffic lanes in each direction together with a median containing left-turn slots. Only if curb parking is required to service proposed land development, will additional lanes for parking be provided. Intersections will be at grade and signal lights. These will occur, at least, at Tremont Street, Shawmut Avenue, Washington Street, Harrison Avenue and Hampden Street.

Preliminary traffic analysis indicates that a grade separated crossing may be necessary at Massachusetts Avenue.

The new local street may be depressed in the vicinity of the new LRCC, Roxse, and Tuckerman Housing to enable construction of a pedestrian bridge, or open space link. (Emphasis supplied.)

The conversion of Sterling Street, a relatively quiet two-lane street, into a major four-lane highway containing a median, at

*Our client did not receive this report until June 21, 1977.

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least five signalized intersections plus a grade separated crossing clearly is a considerably important action which involves substantial planning, time, and expenditures. Further, the proposed action is more than likely to precipitate significant foreseeable alterations in traffic volumes and travel patterns, and possibly in development patterns.

As mentioned above, the new street would provide ingress and egress to the Southeast Expressway and to the new arterial street. Consequently, the traffic volume will be increased substantially, and truckers and automobile drivers who previously used residential roads probably will use the new street for access to the above-mentioned roads. Moreover, construction of the new street would probably cause development patterns in the area to change; at the present time, Roxse Homes is situated among other residential apartment houses. The construction of a major street in that location will likely deter development of any more residential housing, and may even precipitate moves by tenants in existing housing projects and apartments to more desirable locations.

Therefore, the determination that the new street was a "non-major action" was erroneous; the new street is, without question, a "major action" within the meaning of 23 CFR §771.

Moreover, the construction of this street will significantly affect the quality of the human environment within the meaning of §102 of NEPA and of the FHWA regulations. Section 771.3(d) defines an action "significantly affecting the quality of the human environment" as:

"an action in which the overall cumulative primary and secondary consequences significantly alter the quality of the human environment, curtail the choices of beneficial uses of the human environment, or interfere with the attainment of long-range human environmental goals."

Section 771.10(e) further defines the term as, for example:

"(4) An action that (i) causes significant division or disruption of an established community or disrupts orderly, planned development . . . ; or (ii) causes a significant increase in traffic congestion.
(5) An action which . . . (ii) has a significant detrimental impact on . . . ambient noise levels for adjoining areas"

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"Human environment" is defined by the Federal Highway Administration as the "aggregate of all external conditions and influences (esthetic, ecological, cultural, social, economic, historical, etc.) that affect human life." (23 CFR §771.3(e).)

The Cross-town Street will significantly affect the human environment due to the increased noise occasioned by the heavier traffic and greater volume of trucks on the street. Indeed, the noise impact on Roxse Homes should have been measured during the processing of the draft EIS inasmuch as Roxse Homes would be within 90 feet from the proposed Cross-town Street (page 5-75). Moreover, Roxse would abut the new street and should have been notified of the proposed construction, as were other abutments of the proposed project. (Page 5-77). In addition, the construction of this street will pose a safety threat to the small children who live in the housing projects abutting the street. Further, as stated above, the building of a four-lane highway may adversely affect the economic situation of the owners of the residential buildings situated along the street. It is likely that the value of their real property will decrease; many of their apartment units might be vacated and their chances of attracting new tenants would be slim.

The determination that the proposed street is a "major action significantly affecting the quality of the human environment" is sufficient to require the preparation of an EIS, in accordance with §102 of NEPA.

A primary goal of both the Federal-Aid Highway Act and National Environmental Policy Act was to assure to all interested and affected persons the opportunity to participate in an open exchange of views throughout the planning and execution stages of the proposed land use projects. The fact that our client was not notified at all of the proposed construction of the new street until the draft EIS had already been issued demonstrates the failure of the state and federal agencies to meet the requirements set forth in the statutes and regulations. The only recourse is to halt the construction of "Segment 1" of the arterial street system. In addition, a new Environmental Impact Statement should be processed in accordance with the regulations, so that all interested parties may have an opportunity to acquire the necessary information and to fully air their views. It is submitted that once this exchange of information is accomplished, the relevant agencies will realize the significant adverse environmental impact of construction of the proposed Cross-town Street and will decide against its construction.

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Since we desire to avoid extensive litigation, we request a hearing with you or your designee regarding the matters raised herein. Thank you for your cooperation.

Sincerely,

Samuel C. Jackson
(by nbc)

Samuel C. Jackson

cc: Office of the General Counsel	Boston Regional Office
U.S. Department of Transportation	U.S. Army Corps of Engineers
Urban Mass Transportation Administration	Boston Regional Office
Administrator	Federal Energy Administration
Federal Highway Administration	Boston Regional Office
Regional Administrator	Federal Highway Administration
Region I	Federal Railroad Administration
Federal Highway Administration	Advisory Council on Historical Preservation
Asst. Secretary on Environment, Safety & Consumer Affairs	Interstate Commerce Commission
U.S. Department of Transportation	Massachusetts Historic Preservation Officer
Boston Regional Office	Commonwealth of Massachusetts
Environmental Protection Agency	Executive Department
Council on Environmental Quality	Massachusetts Bay Transportation Authority
Boston Regional Office	Massachusetts Department of Public Works
Dept. of Housing & Urban Development	
Secretary	Secretary
Department of Interior	Department of Commerce
Secretary, Department of Health Education and Welfare	Secretary
	Department of Agriculture

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November 5, 1977

Hon. Brock Adams
The Secretary of Transportation
Washington, D.C. 20590

RE: Roxse Homes, Inc. - Orange Line relocation, Boston,
Mass.

Dear Mr. Secretary:

I acknowledge receipt of your letter dated November 2, 1977, in response to my letter of July 22, 1977, objecting to the draft Environmental Impact Statement (EIS) for the Orange Line relocation and arterial street construction projects in Boston. I take exception to your decision that the determination of the above-stated work constitutes a "nonmajor" action within the meaning of the National Environmental Protection Act (NEPA) and the rules and regulations of the Federal Highway Administration and the Urban Mass Transportation Administration.

We also challenge the factual statements contained in your letter that "many meetings were held for concerned citizens and there has been great opportunity to have input in the areas of total redevelopment plans, including the arterial street system---." In fact, neither the apartment owners nor tenants in the apartments that border upon the arterial streets affected by the construction project were notified of meetings to allow citizens and owners input into project plans. Again, may I stress that the negative impact upon the property owners and tenants is irreparable and approval of the (EIS) as proposed would constitute an inequitable, improper and unlawful action by the Department of Transportation.

Therefore, we request the following from you to protect the interest of the owner of the Roxse Apartments and tenants:

- (1) A hearing to be convened by Mr. Norman J. Van Ness, the

November 5, 1977

FHWA Division Administrator for Massachusetts, to explore all the issues relating to the proposed construction work, the Environmental Impact Statement and alternative construction plans.

- (2) Under the Freedom of Information Act, we request a copy of the comments responding to the notice published in the Boston newspapers of the intent of the FHWA to call the proposed arterial street construction project a "nonmajor" action.
- (3) Under the Freedom of Information Act, we request a list of the meetings, dates thereof and transcripts of said minutes that were held to allow concerned citizens and organizations an opportunity to input into the arterial street construction projects planning in Boston as claimed in the third paragraph of your letter.
- (4) Under the Freedom of Information Act, we request a copy of all memoranda, correspondence and decisions made by FWHA, The Urban Mass Transportation Association and your office relating to the determination to proceed as a "nonmajor" action.

My client will pay the cost of duplicating said materials.

I would appreciate receiving this information at your earliest convenience.

Sincerely,

Samuel Jackson, Esq.

SJ:pjc

cc: Mr. James Cofield
Chairman
Roxse Homes, Inc.

Robert Farrel
Chairman
Boston Redevelopment Agency

November 10, 1977

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT F. WALSH, DIRECTOR

SUBJECT: SOUTH END URBAN RENEWAL AREA: AUTHORITY
TO EXECUTE AGREEMENTS NECESSARY TO EXPEDITE
CONSTRUCTION OF CROSSTOWN STREET
AND TO CREATE INDUSTRIAL AND RESIDENTIAL
DEVELOPMENT PARCELS

On October 27, 1977, the Authority delayed taking any action with respect to authorizing the Director to execute certain land transfer agreements by and among the Authority, the Massachusetts Department of Public Works ("DPW"), the Economic Development and Industrial Corporation ("EDIC") and the Boston Edison Company ("Edison"). It is suggested that the execution of these agreements be authorized so as to expedite the construction of the proposed Crosstown Street in order to effectively meet serious existing and anticipated traffic demands. In analyzing the appropriateness of the contemplated action, the following matters should be noted:

- (a.) Existing traffic patterns in the affected areas are haphazard and prohibit efficient traffic control.
- (b.) Existing non-local vehicular traffic places an undue burden upon residential streets.
- (c.) The proposed Crosstown Street, which street has been planned and designed with maximum community participation, will effectively be a by-pass for non-local and non-residential traffic, thereby reducing demands upon local streets.
- (d.) The proposed Crosstown Street is an urban street which has been designed with extensive landscaping provisions exhibiting an unusual sensitivity to the effect upon the community.
- (e.) The construction of the proposed Crosstown Street is a necessary prerequisite to the reconstruction of Tremont Street and Columbus Avenue by the DPW with Urban Systems funds, and the final design will place great emphasis upon residential and pedestrian amenities.

- (f.) The proposed land transfers also reflect the concern which should be given to optimal industrial and residential redevelopment in the South End and Campus High School Urban Renewal Areas. The resulting increase in job opportunities and housing units is manifest.

In summary, the coordination of state and local efforts, supplemented with effective community participation, has created a situation in which the construction of the proposed urban street will protect and enhance the residential character of affected areas and, simultaneously, create opportunities for much needed industrial and residential redevelopment. Accordingly, it is recommended that the Director be authorized to execute the proposed agreements with the DPW, EDIC and Edison.

Appropriate Votes follow:

VOTED: That the Director be and is hereby authorized to execute an agreement by and among the Authority, the Massachusetts Department of Public Works ("DPW") and the Economic Development and Industrial Corporation ("EDIC"), whereby the Authority will agree to transfer, for nominal consideration, title to twenty-five (25) parcels of land in the South End and Campus High School Urban Renewal Areas to the DPW for highway purposes and the DPW will agree to transfer, for nominal consideration, title to twenty-one (21) parcels of land to the Authority and EDIC for redevelopment purposes. Said agreement is to be in substantially the form of the document attached hereto.

VOTED: That the Director be and is hereby authorized to execute an agreement by and between the Authority and the Boston Edison Company whereby the Authority will agree to transfer, for nominal consideration, title to a certain parcel of land on Albany Street, consisting of approximately Six Thousand One Hundred and Sixty Nine (6,169) square feet, to Edison and Edison will agree to transfer, for nominal consideration, title to a certain parcel of land on Albany Street, consisting of approximately Six Thousand One Hundred and Fifty Two (6,152) square feet to Edison. Said agreement is to be in substantially the form of the document attached hereto.

